

UNITED STATES EX REL. MARCUS ET AL.

v.

HESS ET AL. [\[*\]](#)

No. 173.

Supreme Court of United States.

Argued December 10, 1942.

Decided January 18, 1943.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE THIRD
CIRCUIT.

538 *538 *Messrs. William Stanley and Charles J. Margiotti, with whom Mr. Homer
Cummings was on the brief, for petitioners.*

539 *539 *Messrs. William H. Eckert and Eugene B. Strassburger, with whom Mr. John
B. Nicklas, Jr., was on the brief, for respondents.*

MR. JUSTICE BLACK delivered the opinion of the Court.

Respondents, electrical contractors, were employed to work on P.W.A. projects in the Pittsburgh area. Their contracts were made with local governmental units rather than with the United States government, but a substantial portion of their pay came from the United States. Charging the respondents with defrauding the United States through the device of collusive bidding on these projects, [\[1\]](#) the petitioner, in the name of the United States and on his own behalf brought this action under § 5438 and §§ 3490-3493 (31 U.S.C. §§ 231-234) of the Revised Statutes.

We think the conduct of these respondents comes well within the prohibition of the statute, which includes "every person who. . . causes to be presented, for payment . . . any claim upon or against the Government of the United States . . . knowing such claim to be . . . fraudulent." This can best be seen upon consideration of the exact nature of respondents' relation to the government. The contracts found to have been induced by the respondents' frauds were made between them and local municipalities and school districts of Allegheny County, Pennsylvania. A large portion of the money *543 paid the respondents under these contracts was federal in origin, granted by the Federal Public Works Administrator, an official of the United States. 40 U.S.C. 401 (a). The jury and both courts have found that the contracts were obtained by a successfully executed conspiracy to remove all possible competition from "competitive bidding." The bidding itself was a federal requirement; all bidders were fully advised that these were P.W.A. projects; and many if not most of the respondents certified that their bids were "genuine and not sham or collusive." While payment itself, in the sense of the direct transferring of checks, was done in the name of local authorities, monthly estimates for payment were submitted by the respondents to the local sponsors on P.W.A. forms which showed the government's participation in the work and called attention to other federal statutes prohibiting fraudulent claims. It was a prerequisite to respondents' payment by the local sponsors that these estimates be filed, transmitted to, and approved by, the P.W.A. authorities. Payment was then made from a joint construction bank account containing both federal and local funds. The work was done under constant federal supervision.

The government's money would never have been placed in the joint fund for payment to respondents had its agents known the bids were collusive. By their conduct, the respondents thus caused the government to pay claims of the local sponsors in order that they might in turn pay respondents under contracts found to have been executed as the result of the fraudulent bidding. This fraud did not spend itself with the execution of the contract. Its taint entered into every swollen estimate which was the basic cause for payment of every dollar paid by the P.W.A. into the joint fund for the benefit of respondents. The initial fraudulent action and every step thereafter taken pressed ever to the ultimate goal — payment *544 of government money to persons who had caused it to be defrauded.

Government money is as truly expended whether by checks drawn directly against the Treasury to the ultimate recipient or by grants in aid to states. While at the time of the passage of the original 1863 Act, federal aid to states consisted primarily of land grants, in subsequent years the state aid program has grown so that in 1941 approximately 10% of all federal money was distributed in this form.^[6] These funds are as much in need of protection from fraudulent claims as any other federal money,^[7] and the statute does not make the extent of their safeguard dependent upon the bookkeeping devices used for their distribution. The Senatorial sponsor of this bill broadly asserted that its object was to provide protection against those who would "cheat the United States."^[8] The fraud here could not have been any more of an effort to cheat the United States if there had been no state intermediary.